



## **THE AMERICAN LEGION LEGISLATIVE POINT PAPER**

### **VETERANS' 2<sup>ND</sup> AMENDMENT RIGHTS**

It is both sad and ironic that the veterans' community, a community in which each and every member swore to uphold the Constitution of the United States, to include the 2<sup>nd</sup> Amendment, requires advocacy to maintain their constitutional right to bear arms. Unless deemed unfit to possess weapons by a judicial authority with the full benefit of due process, The American Legion believes that each veteran, regardless of disability, should maintain the right to possess a firearm. Any constitutional right should be protected with this same expectation of careful scrutiny to ensure no right is removed without due process.

#### **BACKGROUND:**

Under the Gun Control Act of 1968 (GCA), as amended, persons adjudicated to be mentally defective or who have been committed to a mental institution are prohibited from possessing, shipping, transporting, and receiving firearms and ammunition. Neither a diagnosis of a mental illness nor treatment for a mental illness is sufficient to qualify a person as "adjudicated as a mental defective." Rather, an individual's "adjudication as a mental defective" relies upon a determination or decision by a court, board, commission, or other lawful authority<sup>1</sup>.

The Department of Veterans Affairs (VA) has the authority to determine that a veteran who is unable to manage their financial affairs have a fiduciary appointed to manage their financial affairs for them. VA's own website states this can be done due to "injury, disease, or due to age." Once a determination of the need for a fiduciary is made, VA is required by law to report those veterans requiring a fiduciary to the FBI's National Instant Criminal Background Check System (NICS) and those veterans are then prohibited from owning firearms or having firearms in their residence.

#### **POSITION:**

The American Legion, by resolution, fully supports the 2<sup>nd</sup> Amendment rights of American citizens. Furthermore, The American Legion has concerns about this current infringement on the rights of some veterans, and supports legislation to help improve the system and ensure veterans' rights are not removed without proper due process.

There are many reasons this current policy is detrimental to veterans. However, the three chief concerns are that it provides a potential obstacle to veterans receiving treatment, that it potentially limits successful alternative therapies for mental health conditions, and that it removes a constitutional right without proper due process of law.

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<sup>1</sup> Submission of Mental Health Records to NICS and the HIPAA Privacy Rule – Congressional Research Service report 7-5700 APR 15, 2013

Law and Justice Meeting  
February 13 , 2014

There are concerns that the threat of being placed on a list that might deny them their 2<sup>nd</sup> Amendment rights could act as a deterrent for veterans who might otherwise seek treatment. When the positive effects of therapy for conditions such as Posttraumatic Stress Disorder (PTSD) are so important, driving veterans away for fear of repercussions such as confiscation of firearms could only exacerbate existing stigmas. Individuals suffering from the effects of PTSD often experience heightened concern about personal safety, so the threat of relinquishing their 2<sup>nd</sup> Amendment right to protect themselves can be a powerful deterrent to seeking treatment that would help make their condition more manageable.

Furthermore, when used lawfully and under care, firearms can be an effective form of alternative therapy for PTSD. On December 2, 2012, NBC News published an article regarding veteran hunting trips as a form of therapy for combat veterans<sup>2</sup>. Throughout the nation, numerous organizations organize hunting trips for veterans; and even the Department of Veterans Affairs (VA) has acknowledged the positive effects of shooting firearms for some veterans. Jose Llamas, community and public affairs officer for VA's National Veterans Sports Program stated that hunting is included in a veteran's health-life plan, and at various adaptive sports summits throughout the nation, veterans can enjoy target shooting as well as competitive marksmanship competitions. Additionally, a recent \$25,000 grant was made to the Grand Junction, Colorado, VA Medical Center, to purchase the necessary equipment for veterans to hunt.

Finally, the determination of the need for a fiduciary for a veteran is not made by a judge, but by a bureaucrat. While medical documentation supporting the decision is required, it is important to note this is not always a determination of mental incompetence, but of an inability for whatever reason to manage financial affairs. VA's own policies indicate it could be the result of any one of a combination of factors including age, illness or disease. Congressman Tim Walz (D-MN) went so far as to state "If financial incompetence was cause to take your guns away, nobody in Congress could hunt!" Once a veteran is placed on the list and *deprived of a constitutional right*, it is a long and difficult process to be removed from the list. Especially where constitutional rights are threatened, extra scrutiny must apply to ensure no rights are removed without proper due process.

During the 94<sup>th</sup> National Convention of The American Legion, Resolution 68 was passed. According to the resolution, "The American Legion reaffirms its recognition that the Second Amendment to the Constitution of the United States guarantees each law-abiding American citizen the right to keep and bear arms; and...that the membership of The American Legion urges our nation's lawmakers to recognize, as part of their oaths of office, that the Second Amendment guarantees law-abiding citizens the right to keep and bear arms of their choice, as do the millions of American veterans who have fought, and continue to fight, to preserve those rights, hereby advise the Congress of the United States and the Executive Department to cease and desist any and all efforts to restrict these right by any legislation or order."

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<sup>2</sup> [http://usnews.nbcnews.com/\\_news/2012/12/02/15575983-florida-guide-uses-hunting-as-rustic-therapy-for-combat-veterans?lite](http://usnews.nbcnews.com/_news/2012/12/02/15575983-florida-guide-uses-hunting-as-rustic-therapy-for-combat-veterans?lite)



**NINETY-FOURTH NATIONAL CONVENTION  
OF  
THE AMERICAN LEGION  
Indianapolis, Indiana  
August 28, 29, 30, 2012**

**Resolution No. 68: Second Amendment**

**Origin: Maryland**

**Submitted by: Convention Committee on National Security**

WHEREAS, The Second Amendment to the Constitution of the United States guarantees each law-abiding American citizen the right to keep and bear arms of his or her choice; and

WHEREAS, It is estimated that over 60 million individuals, representing over half of the households in America, have chosen to exercise that right by owning one or more firearms; and

WHEREAS, Gun bans, registration, and licensing of firearms and their owners have had little or no effect in such urban areas such as New York City, California and Washington D.C., and have not prevented violent criminals from obtaining firearms illegally and committing crimes; and

WHEREAS, The restriction of firearms purchases by law-abiding citizens will create a black market in illegal firearms and incur further governmental costs to enforce such restriction, now, therefore, be it

**RESOLVED, By The American Legion in National Convention assembled in Indianapolis, Indiana, August 28, 29, 30, 2012, That The American Legion reaffirms its recognition that the Second Amendment to the Constitution of the United States guarantees each law-abiding American citizen the right to keep and bear arms; and, be it finally**

**RESOLVED, That the membership of The American Legion urges our nation's lawmakers to recognize, as part of their oaths of office, that the Second Amendment guarantees law-abiding citizens the right to keep and bear the arms of their choice, as do the millions of American veterans who have fought, and continue to fight, to preserve those rights, hereby advise the Congress of the United States and the Executive Department to cease and desist any and all efforts to restrict these rights by any legislation or order.**